

## BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Padilla</b>	<b>SB 559</b>

### SUBJECT

Business Expense Deduction/Prohibit Deduction For Discriminatory Clubs Except For Genetic Information

### SUMMARY

This bill adds “genetic information” to the list of protected classes in existing law under which discrimination is prohibited.

This analysis addresses only provisions in the bill that would impact the Franchise Tax Board (FTB).

### PURPOSE OF BILL

It appears that the purpose of this bill is to ensure that people whose “genetic information” may lead to discrimination are recognized and protected in all sections of the law.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative for taxable years beginning on or after January 1, 2012.

### ANALYSIS

#### FEDERAL/STATE LAW

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Under federal law, to which California conforms, expenses incurred for meals and entertainment are generally deductible only if it is “directly related” to or “associated with” the active conduct of the taxpayer's trade or business. Such expenses are subject to other restrictions and strict substantiation requirements. Otherwise, deductible amounts are subject to a 50 percent limitation.

“Entertainment” includes any activity generally considered to be entertainment, amusement or recreation. This includes entertaining guests at night clubs, theaters, sporting events, and at entertainment facilities such as yachts, country clubs, hunting lodges, etc. However, no deduction is allowed for club dues for membership in any business, pleasure, social, athletic, luncheon, sporting, airline, or hotel clubs, unless the membership is directly related to the taxpayer's trade or business.

Anne Maitland, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 8/23/11
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The California Revenue & Taxation Code (R&TC) provides that no trade or business expense deduction is allowed for expenditures made at, or payments made to, a club that restricts membership or the use of its services or facilities on the basis of age, sex, race, religion, color, ancestry, or national origin.

Under Government Code section 11135, current state law prohibits discrimination against any person in the state on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability with respect to access to benefits to any program or activity administered by the state or funded by the state.

Under the Government Code, current state law prohibits any state funds from being used for membership or for any participation involving a payment or contribution in any organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. Likewise, state agencies are prohibited from holding any meeting, conference, or other function in any facility that prohibits the admittance of any person on the basis of race, religious creed, color, national origin, ancestry, or sex.

### THIS BILL

This bill would amend various California codes to redefine the specific characteristics that form the basis for prohibited discrimination to include “genetic information” as an additional protected group. In addition, the bill would amend the R&TC to not prohibit a deduction for business expenses, e.g. entertainment, incurred in connection with a club or organization that discriminates on the basis of “genetic information.”

“Genetic Information” means, with respect to any individual, information about any of the following: the individual’s genetic tests, the genetic tests of family member of the individual, or the manifestation of a disease or disorder in family members of the individual. Genetic information includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. Genetic information does not include information about the sex or age of any individual.

This bill also includes contingent enactment language that would require certain provisions of this bill to be operative only if specified provisions of AB 887 (Emmerson) are also enacted.

### **LEGISLATIVE HISTORY**

AB 14 (Laird, Stats., 2007, Ch. 568) enacted rules that redefine the characteristics that form the basis for discrimination that, if such discrimination occurs, will result in disallowance of otherwise deductible business expenses for payments made to certain clubs. Under the provisions of the act, such prohibited discrimination is on the basis of ancestry and “any characteristic listed or defined in Section 11135 of the Government Code.” Such characteristics include race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability.

AB 239 (Moore, Stats., 1987, Ch. 1463) enacted the personal income tax and corporation tax business deduction disallowance statutes that would be amended by this bill.

### **FISCAL IMPACT**

This bill would not impact the department's costs.

### **ECONOMIC IMPACT**

This bill would not impact personal income tax or corporate income tax revenues.

### **APPOINTMENTS**

None.

### **SUPPORT/OPPOSITION <sup>1</sup>**

Support: American Federation of State, County and Municipal Employees, AFL-CIO, California Communities United Institute, California Conference Board of the Amalgamated Transit Union, California Conference of Machinists, California Employment Lawyers Association, California Nurses Association, California Official Court Reporters Association, California Teamsters Public Affairs Council, Council for Responsible Genetics, Disability Rights California, Disability Rights Legal Center, Engineers and Scientists of California, International Long shore and Warehouse Union, Professional and Technical Engineers, Local 21, UNITE HERE!, United Food and Commercial Workers - Western States Conference, Utility Workers Union of America, Local 132

Opposition: None provided.

### **VOTES**

Concurrence	08/22/11	Y: 24	N: 10
Assembly Floor	08/18/11	Y: 53	N: 22
Senate Floor	05/19/11	Y: 25	N: 13

### **LEGISLATIVE STAFF CONTACT**

<b>Contact</b>	<b>Work</b>
Anna Caballero, Agency Secretary, SCSA	916-653-3358
Christine J. Lally, Deputy Secretary, Legislative Affairs, SCSA	916-653-2656
Selvi Stanislaus, Executive Officer	916-845-4543
Anne Maitland, Interim Legislative Director	916-845-6333

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<sup>1</sup> From Senate Floor Analysis dated August 18, 2011